

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JAMES D. MARRS,

Petitioner,

V.

**FRED BRITTEN, Warden, and
HOUSTON, DCS Director,**

Respondents.

8:12CV364

MEMORANDUM AND ORDER

This matter is before the court on Petitioner James Marrs’s “Motion and Affidavit for Permission to Appeal in Forma Pauperis” (Filing No. [27](#)), and his “Request for Certificate of Appealability” (Filing No. [28](#)). The court liberally construes Petitioner’s “Request for Certificate of Appealability” as a timely filed notice to appeal the court’s order and judgment dated September 30, 2013. Upon careful consideration,

IT IS ORDERED:

1. Pursuant to [28 U.S.C. § 1915\(a\)\(1\)-\(2\)](#), and after considering Marrs's financial status as shown in the records of this court, leave to proceed in forma pauperis on appeal will be granted and Marrs is relieved from paying the appellate filing fee at this time.
2. Petitioner's Motion for a Certificate of Appealability (Filing No. [28](#)) is denied without prejudice to reassertion before the Eighth Circuit Court of Appeals. As previously set forth in the court's order and judgment dated September 30, 2013, the court will not issue a certificate of appealability in this matter. (See Filing No. [24](#) at CM/ECF pp. 12-13) ("In this case, [Marrs] has failed to make a substantial showing of the denial of a constitutional right. The court is not persuaded that the issues raised in the Petition are debatable among reasonable jurists, that a court could resolve the issues differently, or that the issues deserve further proceedings. Accordingly, the court will not issue a certificate of appealability in this case.")

DATED this 31st day of October, 2013.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge

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